

**Testimony of
Robert S. LaBrant
Senior Vice President and General Counsel
Michigan Chamber of Commerce
on HB 4628
before the
House Ethics and Elections Committee
on April 24, 2007**

Mr. Chairman and Members of the Committee:

For 202 years the Secretary of State has been Michigan's chief election officer, 32 of those years while Michigan was a territory and for the past 170 years of statehood. Since 1911, when Michigan became the second state in the nation to enact a corrupt practices act, the Secretary of State has administered campaign finance regulation.

At the last Constitutional Convention of 1961-62, delegates drafted a new constitution that eliminated holding elections to select the state superintendent of public instruction, state treasurer, state auditor and state highway director.

Delegates, however, retained the independent election of two state administrative officers in the executive branch – the attorney general and the secretary of state.

Why was the secretary of state continued as an independently elected state-wide officer? Most certainly it was because the delegates wanted the state's chief election officer to be ultimately accountable to the voters of Michigan. I seriously doubt if the only role left to the secretary of state, was to issue driver's licenses and sell vehicle license plates, that Michigan voters would continue to elect the secretary of state.

Rep. Miller's bill, strikes references to the secretary of state in the Michigan Campaign Finance Act 112 times and substitutes as a replacement the unelected Director of Elections.

This bill is not so different from the highly partisan attempt by House Republicans in 1999 to strip from newly elected Attorney General Jennifer Granholm the power to issue attorney general opinions. That attempt backfired in the court of public opinion.

During the 24 years that Richard Austin was in office as Michigan's longest serving secretary of state, Republicans controlled the governor's office 16 of those years. No attempt was ever made by Republicans to strip from the secretary of state the full role of chief election officer, or having oversight over campaign finance regulation.

If Rep. Miller wants to emasculate the powers of the elected secretary of state, he should introduce a house joint resolution and seek voter approval to amend the Michigan Constitution.

We should all regret that so many trees had to die to print this 63 page bill. The bill consists of 30 sections. The only change in 16 of those sections that had to be republished was to strike the reference to the secretary of state a total of 112 times.

Let's check out the other changes buried in this bill.

The first change made in this bill, I thought was to get rid of first dollar reporting by raising the disclosure threshold to \$50 and over. Michigan's Campaign Finance Law provides for the fullest disclosure of contributions of any state in the nation. We have the lowest reporting threshold found in any state law. With the free distribution of the MERTS program, where every contribution regardless of size is input into the system and with mandatory electronic filing of campaign finance reports, why would Michigan retreat from first dollar reporting? The only explanation is that this bill is designed to allow the UAW, AFL-CIO and MEA PACs to file campaign finance statements that although they may total in the hundreds of thousands of dollars or more, will itemize no one by name and address.

However, upon closer examination this provision is even more suspect. Perhaps, inadvertently this provision also creates the "Mother of all Loopholes." Any transaction valued less than \$50 would no longer, by definition, be considered a "contribution." Therefore a transaction less than \$50 in value would not be subject to the Act. Not only would transactions under \$50 be exempt from the Act's disclosure requirement, but it opens the door for committees to accept otherwise illegal contributions from corporations, labor unions, tribes and casinos if the value is less than \$50.

The bill makes two changes to Sec. 55, the section which regulates political action committees.

The first change is to allow a union PAC which can currently solicit contributions from a union member and their "spouse" to the broader term, "immediate family" instead of spouse. The same change also applies to the "immediate family" of a shareholder, officer, director or managerial employee for a corporate or association PAC. "Immediate Family" is defined in Sec. 8 of the Act as a child residing in a candidate's family or a dependent of the candidate or candidate's spouse for federal income tax purposes. But, Sec. 55 isn't about candidates it's about PAC solicitation. Section 69 of the Act, dealing with gubernatorial fund-raising, has a broader definition for "immediate family" that may come closer to a dictionary definition to include a spouse, parent, brother, sister, son or daughter. Choose either definition, it's not good public policy to have babies, eight year olds or teenagers eligible to contribute to a corporate, union or association PAC. If you choose the other definition, why should your parents, your sister or brother, none of which work at your corporation, or are a member of your union or your association, be eligible to contribute to a PAC just because of your family relationship with them?

The second change in Section 55 is the repeal of the requirement for annual affirmative consent for PAC payroll deduction. Michigan has over a decade of experience with annual affirmative consent. Section 55 applies to unions and corporations alike. A review of campaign finance reports from the 2000 election cycle compared to the most recent 2006 election cycle shows that almost all of the top 150 PACs – be they corporate or

union raised more in 2006 than they did in 2000. This bill is a solution looking for a problem. PAC managers just have to work a little harder.

Sec. 55 requirements for annual affirmative consent are no more burdensome than payroll deduction for the United Way. Your United Way consent lasts only a year and then it needs to be renewed. You don't sign up for payroll deduction for United Way and have that deduction stay in force until you die, leave employment or retire. No, United Way comes back to you each annual campaign and gets your consent for another year of payroll deduction. Maybe the deduction is higher than last year, or lower, or it remains the same. That's your choice. Why should PAC payroll deduction be any different?

In less than 10 weeks time, the U.S. Supreme Court will release its opinion in the case of Washington v. Washington Education Association. Most court observers expect the U.S. Supreme Court to reverse a Washington Supreme Court ruling which narrowly held that affirmative consent violates a union's first amendment rights. If the U.S. Supreme Court finds for the WEA, Rep. Miller doesn't need this bill, Sec. 55 requirements for annual affirmative consent and even its ban on reverse check-off by unions will be unconstitutional. But, he shouldn't hold his breath. Neither should this Committee be in a rush to pass this bill without first reading the forthcoming WEA decision.

This bill also for the first time would allow the State of Michigan to ignore civil service rules, an AG opinion and two Department of State declaratory rulings and begin to administer union PAC payroll deduction programs. Restrictions on public bodies administering union PAC payroll deduction programs have been upheld by the 6th Circuit Court of Appeals, whose jurisdiction covers Michigan, in Pizza v. Toledo Area AFL-CIO.

This bill adds a new Section 57A to the Act, that section would create a contribution free zone prohibiting the solicitation or acceptance of contributions by a candidate in all public buildings, public office buildings and courthouses across the state with two curious exceptions: the governor's mansion in Lansing and the governor's mansion on Mackinac Island.

I would be remiss if I didn't identify a few provisions in this bill that do have merit: quarterly reporting by all committees, expanding the ban on honorariums beyond legislators to all individuals who hold state elective office and prohibiting a candidate committee from paying a candidate a salary or compensation. This committee and House have already acted on legislation dealing with robo-calls, as well as website and e-mail communications. The bill also contains several provisions which would apply, in the event, that there has been found reason to believe that the Attorney General has violated the Act to refer the matter over to the Ingham County prosecuting attorney rather than to the attorney general's office. Many of these items have already been introduced as separate legislation rather than part of an omnibus multi-section bill like House Bill 4628.

Finally, let me close by stating that this bill smacks of political gamesmanship. It makes political contributions less voluntary, less subject to regulation and less open to public disclosure.